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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking to Determine	)	RM-8303
the Terms and Conditions Under	)	
Which Tier I LECs Should Be	)	
Permitted to Provide InterLATA	)	
Telecommunications Services	)	

COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, pursuant to 47 CFR § 1.1405, hereby submits its comments regarding the above-captioned Petition for Rulemaking ("Petition") filed by five Bell Operating Companies[1] ("BOCs") with the Commission on July 15, 1993.

In their Petition, the five BOCs ask the Commission to undertake a rulemaking proceeding to establish terms and conditions under which they may be permitted to provide interLATA telecommunications services.[2] MFS agrees with the BOCs that it would be in the public interest for the Commission to determine whether, and under what circumstances, BOC provision of interLATA services should be authorized, and therefore urges the Commission to grant the Petition and issue a Notice of Proposed Rulemaking.

[1] The five BOCs who filed the Petition are Bell Atlantic, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and Southwestern Bell Corporation.

[2] The caption of the BOCs' Petition is misleading. The Commission already has established rules under which "Tier I LECs," other than the BOCs, may provide interLATA services. Several Tier I LECs, or their affiliates, already do offer such services.

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MFS also agrees that it would be in the public interest to remove existing barriers to entry in the interLATA services market, *if* adequate safeguards exist to assure that the BOCs cannot use their continuing monopoly over virtually all forms of local exchange telecommunications to discriminate against long-distance competitors, cross-subsidize competitive services with monopoly revenues, or otherwise engage in anti-competitive behavior.[3] The BOCs' view of what would constitute adequate safeguards, however, as expressed in their Petition, is almost comically myopic. They would have the Commission invite them to enter the long-distance market *as non-dominant carriers,* subject only to price cap regulation and "non-structural safeguards, of the sort developed for CPE and enhanced services . . . ." Petition at 34, 37-38. This would be an open invitation to them to repeat both the blatant and the subtle monopolistic practices of the pre-divestiture Bell System.[4]

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[3] This is not to imply, however, that MFS agrees with the BOCs' assertions that the current state of competition in the long-distance market is somehow defective, or that BOC entry into this market would somehow produce massive and immediate consumer benefits. Even assuming, for the sake of argument, that the BOCs were correct in alleging that the long-distance market is currently an "oligopoly" characterized by a "price umbrella," Petition at 12-14, they fail to explain why it would be in their interests to engage in a price war rather than simply to enjoy a share of the inflated profits made possible by participating in the oligopoly. MFS supports the removal of barriers to entry in *all* telecommunications markets because it believes that this policy will yield the greatest long-term benefits to consumers, but it does not believe that the presence or absence of any one company (or any seven) in the market is critical.

[4] The history of abuses that led to divestiture is well-known to the Commission, and need not be repeated here. It is worth stressing, however, that the evidence in the Government's antitrust suit demonstrated that regulatory policies intended to prevent the Bell System from monopolizing the long-distance and CPE markets did exist, but had been ineffective. *See, e.g., United States v. Western Electric Co.*, 673 F. Supp. 525, 530-31, 541-42 (D.D.C. 1987), *aff'd in part and rev'd in part*, 900 F.2d 283 (D.C. Cir. 1990). The Commission should, at the very least, heed the lessons of history and make sure that any safeguards it adopts this time are both more effective and more enforceable than those pre-divestiture rules.

The primary threat to effective long-distance competition arises today, as it did before divestiture, from the local exchange bottleneck. As usual, the BOCs greatly exaggerate the actual present extent of competition within the local exchange, seeking to convince the Commission that they no longer control essential facilities. Petition at 14-25. The truth, of course, is that the BOCs and other local exchange carriers collectively still control over 99.5% of the total local telecommunications market, and face competition only in limited and specialized niches. Even the BOCs concede that "today's small residential and business customers remain largely dependent on the single, established local exchange carrier for telephone service." *Id.* at 25. But, they contend, technological developments dictate that their monopoly "will not survive much longer." *Id.*

The BOCs are correct in identifying the *potential* for more extensive local exchange competition to develop in the foreseeable future, but they are plainly wrong in characterizing that development as inevitable. Even though local exchange service is not now a "natural monopoly" (if it ever was), it remains a *de jure* and *de facto* monopoly in most States because of barriers to entry erected by regulatory policies. Effective local exchange competition cannot emerge until legal barriers to entry are removed, full and equal interconnection to BOC local networks is available, and access to bottleneck LEC facilities is available on a non-discriminatory and unbundled basis.[5]

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[5] Legal barriers *alone* preclude competition today in the vast majority of States. To date, only New York and Illinois have expressly authorized competitive carriers to provide any form of switched intra-exchange service (and in the case of Illinois, only resale of LEC services has been authorized). A handful of States, including Massachusetts, Michigan, Oregon, and (continued...)

Given the continued dominance of the BOCs in the local exchange market, MFS submits that the Commission should issue proposed rules that would require a BOC to demonstrate that all barriers to local exchange competition within its territory had been removed, as a precondition to entering the interLATA market. If the conditions were satisfied in some parts of a BOC's service area, but not others, the company could offer interLATA services only in those areas where the conditions were satisfied. The Commission should use its Notice of Proposed Rulemaking to solicit comments as to what conditions would be necessary and sufficient to assure effective local competition. MFS suggests, however, that the Commission should require a BOC to demonstrate *both* that barriers to entry have been removed *and* that competitive alternatives to BOC local exchange service actually exist and are available to a substantial number of customers.

In order to demonstrate that barriers to entry have been removed, a BOC should be required to show that all of the following conditions are satisfied:

1. Competing carriers must be legally authorized to provide any form of intrastate telecommunications service, including local exchange service. State certification or registration procedures that merely require a provider to establish its technical, managerial, and/or financial capacity to provide service would not be inconsistent with this condition.

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[5](...continued)
Pennsylvania, have adopted legislation or regulatory policies that create the potential for authorization of local competition in the future. Many more States, however, including such major population centers as California, Florida, Georgia, New Jersey, Ohio, North Carolina, and Virginia, maintain explicit statutory or regulatory prohibitions on local exchange competition.

2. Competing carriers must be afforded franchise rights by state and/or municipal governments that are equivalent to those afforded the BOC, and must not be subject to discriminatory franchise fees or taxes.

3. The BOC must unbundle all basic network functionalities, including (but not limited to) subscriber access lines, switching, transport, signalling, operator functions, and ancillary functions, and must make each unbundled functionality available for purchase pursuant to uniform technical standards. BOC conduit, pole attachments, and rights-of-way should similarly be made available on an unbundled and non-discriminatory basis.

4. Separate interconnection to each unbundled network functionality must be made available.

5. BOCs must interchange local traffic with competing providers under technical and financial arrangements no less favorable than those under which they currently interconnect with independent telephone companies.

6. The BOC must charge itself for use of basic network functionalities and of rights-of-way at the same price it charges to competing carriers. For example, unbundled subscriber loops must be available to competing carriers at the same price that they are provided to end users as part of a bundled local exchange service.

7. All BOC service offerings, including basic local exchange service, must be available for resale and sharing without restriction.

8. Customers must have the ability to change local exchange carriers without being required to change their telephone number. The BOCs must relinquish control of assignment of scarce numbering resources.

9. BOC customers must be able to preselect their preferred carrier to handle their intraLATA as well as interLATA usage (for both local and toll calls), using procedures comparable to existing interLATA presubscription.

MFS proposes that, when all of the foregoing conditions are satisfied within exchanges accounting for more than one-half of a BOC's regulated revenues, the BOC should be permitted to offer interLATA services to customers *outside* of its local exchange service territory.

Even if these conditions are satisfied, however, the BOCs will not be precluded from leveraging their dominant position in the local exchange unless and until local exchange customers have actual competitive alternatives. Therefore, the BOC should be able to offer interLATA services *within* its local exchange service territory only upon demonstrating that competitive local exchange services (offered by unaffiliated providers) are available to at least 50 percent of all subscribers within the proposed service area, that at least 15 percent of all subscribers actually use such competitive services, and that competitive providers account for at least 15 percent of all local exchange revenues within the service area.[6] The first of these criteria is designed to assure that a sufficient

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[6] MFS proposes that the competitive criteria be measured in terms of the number of (continued...)

number of customers are actually able to choose their local exchange provider to deter the BOC from seeking to discriminate against competing long-distance carriers; the BOC would potentially have more to lose by alienating its local exchange customers than it would gain by capturing additional long-distance business. The second and third tests are designed to assure that the competitive service is a *bona fide* alternative to BOC exchange service. A service could be "available" to all customers, as cellular service is today in many areas, yet not be a realistic alternative to local service in most cases due to pricing or technical limitations. Likewise, an ancillary type of service could be used by a substantial portion of subscribers yet amount for a minimal share of revenues if those customers also retained basic service from the dominant LEC.

[6](...continued)
subscribers, not the number of access lines or minutes, to prevent the BOCs from claiming the existence of widespread competition based on services that are actually used only by a handful of high-volume customers.

For the foregoing reasons, MFS urges that the BOC's Petition be granted, and that the Commission commence a rulemaking proceeding to establish sufficient conditions to ensure that effective opportunities for local exchange competition will exist before the BOCs are permitted to enter the interLATA services market.

Respectfully submitted,

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Dated: August 30, 1993

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CERTIFICATE OF SERVICE

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